

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

KURT SINGLETON,

Plaintiff,

vs.

INTELLISIST, INC. D/B/A SPOKEN  
COMMUNICATIONS, a Washington  
Corporation,

Defendant.

Civil Action No. 2:17-cv-01712 RSL

STIPULATED PROTECTIVE ORDER

**STIPULATED PROTECTIVE ORDER**

Plaintiff Kurt Singleton, jointly with Defendant Intellisist, Inc. d/b/a Spoken Communications, a Washington Corporation, stipulate to this Protective Order to safeguard the privacy and confidentiality of information and documents exchanged during discovery. The terms of this Stipulated Protective Order, as detailed below, are mutually-agreed upon by all parties to the above-captioned case.

1. **PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket

1 protection on all disclosures or responses to discovery, the protection it affords from public  
2 disclosure and use extends only to the limited information or items that are entitled to  
3 confidential treatment under the applicable legal principles, and it does not presumptively entitle  
4 parties to file confidential information under seal.

5 2. "CONFIDENTIAL" MATERIAL

6 "Confidential" material shall include the following information, documents and tangible  
7 things produced or otherwise exchanged: (a) information and documents protected from  
8 disclosure by the attorney-client privilege; (b) financial and proprietary information and  
9 documents not in the public domain or subject to public disclosure; (c) confidential and  
10 proprietary information and documents regarding Spoken's finances, operations, clients, or  
11 customers or regarding Mr. Singleton's finances or tax information; (d) personnel information  
12 and documents regarding employees other than the parties.

13 3. SCOPE

14 The protections conferred by this agreement cover not only confidential material (as  
15 defined above), but also (1) any information copied or extracted from confidential material; (2)  
16 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
17 conversations, or presentations by parties or their counsel that might reveal confidential material.

18 However, the protections conferred by this agreement do not cover information that is in  
19 the public domain or becomes part of the public domain through trial or otherwise.

20 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

21 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
22 or produced by another party or by a non-party in connection with this case only for prosecuting,  
23 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
24 the categories of persons and under the conditions described in this agreement. Confidential  
25 material must be stored and maintained by a receiving party at a location and in a secure manner  
26 that ensures that access is limited to the persons authorized under this agreement.

1           4.2    Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the designating party, a receiving party may  
3 disclose any confidential material only to:

4           (a)    the receiving party's counsel of record in this action, as well as employees  
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6           (b)    the receiving party if he is an individual party to this action, and the  
7 officers, directors, and employees (including in house counsel) of the receiving party to whom  
8 disclosure is reasonably necessary for this litigation if it is a corporate party to this action, unless  
9 the parties agree that a particular document or material produced is for Attorney's Eyes Only and  
10 is so designated;

11           (c)    experts and consultants to whom disclosure is reasonably necessary for  
12 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
13 A);

14           (d)    the court, court personnel, and court reporters and their staff  
15 subject to Section 4.3 below;

16           (e)    copy or imaging services retained by counsel to assist in the duplication of  
17 confidential material, provided that counsel for the party retaining the copy or imaging service  
18 instructs the service not to disclose any confidential material to third parties and to immediately  
19 return all originals and copies of any confidential material;

20           (f)    during their depositions, witnesses in the action to whom disclosure is  
21 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
22 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
23 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
24 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
25 under this agreement;

26           (g)    the author or recipient of a document containing the information or a  
27 custodian or other person who otherwise possessed or knew the information.

1           (h) the videographer who videotapes Confidential Information at a deposition  
2 in this litigation;

3           (i) any mediator or discovery referee in this litigation, and employees and  
4 personnel of said mediator or discovery referee;

5           (j) any other individuals agreed to in writing by the designating party.

6           4.3 Filing Confidential Material. Before filing confidential material or discussing or  
7 referencing such material in court filings, the filing party shall confer with the designating party  
8 to determine whether the designating party will remove the confidential designation, or whether  
9 the document can be redacted, or whether a motion to seal or stipulation and proposed order is  
10 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
11 standards that will be applied when a party seeks permission from the court to file material under  
12 seal.

13       5. DESIGNATING PROTECTED MATERIAL

14           5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
15 or non-party that designates information or items for protection under this agreement must take  
16 care to limit any such designation to specific material that qualifies under the appropriate  
17 standards. The designating party must designate for protection only those parts of material,  
18 documents, items, or oral or written communications that qualify, so that other portions of the  
19 material, documents, items, or communications for which protection is not warranted are not  
20 swept unjustifiably within the ambit of this agreement.

21           Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
22 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
23 unnecessarily encumber or delay the case development process or to impose unnecessary  
24 expenses and burdens on other parties) expose the designating party to sanctions.

25           If it comes to a designating party's attention that information or items that it designated  
26 for protection do not qualify for protection, the designating party must promptly notify all other  
27 parties that it is withdrawing the mistaken designation.

1           5.2   Manner and Timing of Designations. Except as otherwise provided in this  
2 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
3 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
4 be clearly so designated before or when the material is disclosed or produced.

5           (a)   Information in documentary form: (*e.g.*, paper or electronic documents  
6 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
7 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
8 contains confidential material. If only a portion or portions of the material on a page qualifies for  
9 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
10 making appropriate markings in the margins).

11           (b)   Testimony given in deposition or in other pretrial proceedings: the parties  
12 and any participating non-parties must identify on the record, during the deposition or other  
13 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
14 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
15 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
16 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
17 confidential information at trial, the issue should be addressed during the pre-trial conference.

18           (c)   Other tangible items: the producing party must affix in a prominent place  
19 on the exterior of the container or containers in which the information or item is stored the word  
20 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
21 the producing party, to the extent practicable, shall identify the protected portion(s).

22           5.3   Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
23 designate qualified information or items does not, standing alone, waive the designating party's  
24 right to secure protection under this agreement for such material. Upon timely correction of a  
25 designation, the receiving party must make reasonable efforts to ensure that the material is  
26 treated in accordance with the provisions of this agreement.

1     6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

2             6.1     Timing of Challenges. Any party or non-party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
5 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
7 original designation is disclosed.

8             6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
9 regarding confidential designations without court involvement. Any motion regarding  
10 confidential designations or for a protective order must include a certification, in the motion or in  
11 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
12 conference with other affected parties in an effort to resolve the dispute without court action. The  
13 certification must list the date, manner, and participants to the conference. A good faith effort to  
14 confer requires a face-to-face meeting or a telephone conference.

15             6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
16 intervention, the designating party may file and serve a motion to retain confidentiality under  
17 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
18 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
19 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
20 other parties) may expose the challenging party to sanctions. All parties shall continue to  
21 maintain the material in question as confidential until the court rules on the challenge.

22     7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
23 LITIGATION

24             If a party is served with a subpoena or a court order issued in other litigation that compels  
25 disclosure of any information or items designated in this action as "CONFIDENTIAL," that  
26 party must:  
27

1 (a) promptly notify the designating party in writing and include a copy of the  
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or order is  
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued  
7 by the designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
10 material to any person or in any circumstance not authorized under this agreement, the receiving  
11 party must immediately (a) notify in writing the designating party of the unauthorized  
12 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
13 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
14 this agreement, and (d) request that such person or persons execute the "Acknowledgment and  
15 Agreement to Be Bound" that is attached hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
17 MATERIAL

18 When a producing party gives notice to receiving parties that certain inadvertently  
19 produced material is subject to a claim of privilege or other protection, the obligations of the  
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
21 provision is not intended to modify whatever procedure may be established in an e-discovery  
22 order or agreement that provides for production without prior privilege review. The parties  
23 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

24 10. NON TERMINATION AND RETURN OF DOCUMENTS

25 Within 60 days after the termination of this action, including all appeals, each receiving  
26 party must return all confidential material to the producing party, including all copies, extracts  
27

1 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
2 destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
4 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
6 work product, even if such materials contain confidential material.

7 The confidentiality obligations imposed by this agreement shall remain in effect until a  
8 designating party agrees otherwise in writing or a court orders otherwise.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10  
11 DATED: August 1, 2018

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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: Aug. 2, 2018

  
HONORABLE ROBERT S. LASNIK  
United States District Court Judge

Presented by:

/s/ Benjamin Stone

/s/ Tera Rica Murdock

/s/ Linda R. Larson

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EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on [date] in the  
case of **Kurt Singleton v. Intellisist, Inc. d/b/a Spoken Communications, a Washington  
Corporation, in Cause No. 2:17-cv-01712 RSL**. I agree to comply with and to be bound by all  
the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so  
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with the  
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_